



Attorney Docket No. 404332000200

**CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on May 4, 2001.

*C. Wilson*  
C. Wilson

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

**PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir or Madam:

The attached Notice of Incomplete Nonprovisional Application was mailed to Applicant in the above-captioned patent application on March 7, 2001. The Notice provides that the specification and the specification with at least one claim was omitted when the above-captioned patent application was filed in the U.S. Patent and Trademark Office.

With this petition, Applicant respectfully asserts that a specification with at least one claim, which is enclosed, was included with the application on pages 1-143, including two pages which were both labeled page 85, when filed in the U.S. Patent and Trademark Office on December 22, 2000. In addition, 99 pages of drawings were included with the application. Therefore, Applicant respectfully requests that the entire specification on pages 1-143, including two pages labeled page 85 be afforded a filing

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date of December 22, 2000, along with the 99 pages of drawings. Under Section 503 of the Manual of Patent Examining Procedure (MPEP), a returned, un-annotated postcard is prima-facie evidence that all the items properly identified and itemized on the postcard were received by the Patent and Trademark office on the date stamped on the postcard (Office Date stamp).

Enclosed is a photocopy of the postcard filed with the application which itemizes and properly identifies the components filed with the application. Specifically, the postcard identifies a specification and one page of claims and there is no annotation on the postcard noting that these items were not received. Also, the postcard bears an Office Date stamp showing that the application papers were filed on December 22, 2000. Thus, the returned, un-annotated postcard provides prima-facie evidence of receipt in the Patent and Trademark Office of the specification with at least one claim of the above-captioned application.

Further, the Express Mail receipt (copy enclosed) indicates that the weight of the package was indicated as 2 lbs. 9 ounces. The complete patent application that is in our file weighs approximately the same amount. The weight of the application without the specification on page 1-85 is only 1 lb. and 15 ounces. (See declaration of Charmayne Wilson). Therefore, this indicates that the package that was mailed contained the entire specification on pages 1-143 the 99 pages of drawings.

In addition, a new Provisional Patent Application with identical contents absent one claim was filed on the same day. The Express Mail Receipt for this Express Mail envelope notes the weight as 2 lbs. 10 ounces. A copy of the file history for this application (Serial No. 60/258,112 contains pages 1-85 of the specification (see Declaration of Charmayne Wilson). The weight of the two packages sent was approximately the same, serving as further evidence that the non-provisional application sent contained a specification.

As further proof of receipt in the Patent and Trademark Office of the specification with at least one claim, Applicant's legal representative, Morrison & Foerster, LLP, has a standard procedure which is followed when filing a new patent application. Specifically,

Applicant's legal representative makes an exact photocopy of the application as filed just prior to placing the application in an Express Mail envelope and forwarding the envelope to the PTO. The photocopy of the application is then filed in the center section of a tri-fold file which is marked with client identification information.

As attested to in the attached Declarations of Stephen C. Durant, Donalyn Pryor and Charmayne Wilson in support of this petition, all of whom prepared and filed the application in the present case, this procedure was followed in the filing of the present application. Specifically, Charmayne Wilson declares that she generated an original copy of the specification, produced an exact photocopy thereof, and placed the photocopy in the center section of a tri-fold file folder marked with client identification information. Specifically, Donalyn Pryor declares that she placed the original specification in an Express Mail envelope addressed to the Assistant Commissioner of Patents. Additionally, Stephen C. Durant declares that he accepted this envelope from Donalyn Pryor and deposited it with the U.S. Postal Service on December 22, 2000.

Further, as attested to in the attached declaration of Stephen C. Durant in support of this petition, the tri-fold file used by Applicant's representative in this case contains includes a specification on pages labeled 1 to 143, with two pages labeled page 85, and one page of claims on the page labeled 143.

Finally, after placing the photocopy of the application in the center section of the tri-fold file folder, the photocopy of the application was not removed therefrom or otherwise tampered with by Donalyn Pryor and Charmayne Wilson, or Stephen C. Durant from the time the application was filed to the time that Stephen C. Durant checked the photocopy of the application for the presence of the specification with at least one claim, and, these are the only three people employed by Applicants representatives who have had any connection with the filing of the present application. Thus, there is no reason for any other person to have tampered in any way with the photocopy of the application or the tri-fold file folder in general.

In sum, the photocopy of the application in the tri-fold file folder is an exact photocopy of the specification sent to the PTO. Further, the photocopy contains a specification with at least one claim. Finally, the photocopy of the application was not

tampered with in any way between the time that it was placed in the tri-fold file folder and the time it was checked for completeness. Accordingly, the complete application, including the specification with at least one claim, must have been included in the envelope to the PTO.

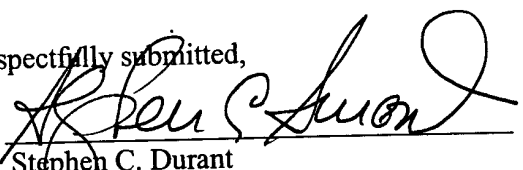
As explained above, and as shown by the enclosed documents, Applicant respectfully asserts that the specification with at least one claim was mailed to the patent trademark office on December 22, 2000. Thus, Applicant respectfully requests that the entire specification, labeled pages 1-143 with two pages labeled 85, be accorded a filing date of December 22, 2000.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404432000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

Respectfully submitted,

By:

  
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